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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/752,709	01/08/2004	John H. Hayes	010628.50474C3	5556
23911 7590 06/01/2007 CROWELL & MORING LLP INTELLECTUAL PROPERTY GROUP P.O. BOX 14300 WASHINGTON, DC 20044-4300			EXAMINER CONLEY, FREDRICK C	
			ART UNIT 3673	PAPER NUMBER
			MAIL DATE 06/01/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/752,709	<b>Applicant(s)</b> HAYES, JOHN H.	
	<b>Examiner</b> FREDRICK C. CONLEY	<b>Art Unit</b> 3673	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 April 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☒ Claim(s) 1-8 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/25/07 has been entered.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5, and 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 4,947,500 to Seiler in view of U.S. Pat. No. 6,253,401 to Boyd.

Claims 1 and 8, Seiler discloses a mattress system, comprising:

a mattress (1,2,3) having a top surface defined by an upper strip 3 and a bottom surface defined by a base layer 1;

a cavity arranged in the mattress, the cavity being open at least toward the top surface and having a defined size;

an expandable cushion (4-9) arranged in the cavity;

a mattress protector (19,20) covering at least the top surface of the mattress, the protector including a first portion defined by an insert 19 that extends into the cavity and a second portion defined by a cover layer 20 that extends over the expandable cushion arranged in the cavity; and

a control system 17 operatively coupled with the cushion to control an expansion and contraction of the cushion, wherein the control system includes a fluidic pump 18 arranged to pump fluid into the expandable cushion, a fluid relief mechanism arranged to allow fluid to escape the expandable cushion (col. 3-4 lines 66-68 & 1-10), and a the control system defining a fluid pressure switch operable to automatically maintain a defined pressure level in the expandable cushion during a given cycle (col. 4 lines 11-21). Seiler fails to disclose the control system maintaining the pressure within the cushion. Boyd discloses a control system that maintains the pressure within a cushion (col. 2-3 lines 66-67 & 1-13). It would have been obvious for one having ordinary skill in the art at the time of the invention to employ a control system as taught by Boyd in order for the user to conveniently maintain desired pressures (col. 3 lines 12-13).

Claim 2, wherein the fluid is air, and wherein a control switch is provided to control an inflation and deflation of the expandable cushion.

Claim 3, wherein the control switch is inherently an electric control switch.

Claim 5, wherein the fluid is air.

Claim 7, wherein the fluid relief mechanism allows the fluid to escape the expandable cushion to maintain the defined pressure level.

Claims 4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 4,947,500 to Seiler in view of U.S. Pat. No. 6,253,401 to Boyd as applied to claim 1, and further in view of U.S. Pat. No. 4,867,140 to Hovis et al.

With regards to claims 4 and 5, Seiler, as modified, discloses all of the Applicant's claimed limitations except for a reservoir and the fluid being a liquid. Hovis discloses an inflatable device having a reservoir 62 and employing a liquid (col. 2 lines 65-68). It would have been obvious for one having ordinary skill in the art at the time of the invention to employ a reservoir and liquid as taught by Hovis in order to pressurize the system of Seiler.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-7 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FREDRICK C. CONLEY whose telephone number is 571-272-7040. The examiner can normally be reached on M-TH.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, PATRICIA L. ENGLE can be reached on 571-272-6660. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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